# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**COMPANY APPLICATION No. 290 of 2005**
**In**
**COMPANY PETITION No. 137 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SHRENO INVESTMENT AND FINANCE LIMITED - Applicant(s)**

**Versus**

**REGISTAR OF COMPANY - Respondent(s)**

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**Appearance :**
MRS SWATI SOPARKAR for Applicant(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
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**CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**

**Date : 06/09/2005**

**ORAL JUDGMENT**

1.Heard Ms.Soparkar, learned Counsel for the petitioner and Mr.P.J.Malkan with Mr.Malkan, learned Counsel for

the Opponent finally.

2. The only question which arises for consideration of this Court is whether it is open to the respondent Registrar of Companies to insist for additional compliance of Section 21 of the Indian Companies Act, 1956 (hereinafter referred to as “the Act”), when this Court has sanctioned the scheme for amalgamation, which included the change of name.

3. There is no dispute on the factual aspects that there was a scheme of amalgamation between M/s.Shreno Limited and M/s.Shreno Investment and Finance Limited. There is also no dispute on the point that for getting appropriate sanction of the scheme of amalgamation Company Petitions No.137 and 138 of 2004 were preferred by the Transferer and the Transferee Company. There is also no dispute on the point that when this Court (Coram:A.R.Dave, J.) considered the matter for granting sanction to the scheme of amalgamation, the objection was raised by the Registrar of Companies upon the communication of Regional Director of Companies, Western Region for Central Government, contending, inter alia, that for change of name, procedure as required under Section 21 of the Act is required to be followed.

4.It appears that this Court (Coram: A.R.Dave, J.), after taking into consideration the aforesaid objection observed as under:

> “Considering the same along with the submissions made by Mrs.Soparkar, advocate for the petitioner companies, in my opinion, there is no reason to withhold the sanction to the scheme of amalgamation.”

5. Ultimately, the order was passed for sanctioning the scheme as prayed in para 20(A) of the Company Petition No.137 of 2004 and para 15(A) of the Company Petition No.138 of 2004. Therefore, objection raised on behalf of the Central Government through the Regional Director and the Registrar of Companies was not accepted and in spite of such objection, the sanction of the scheme was granted. There is also no dispute on the point that this Court, while passing the order for sanctioning the scheme of amalgamation did not provide for any condition to comply with the provisions of Section 21 of the Act separately for giving effect to the scheme.

6.It appears that thereafter when the applicant Company filed the order of this Court with the Registrar of Companies and applied for the certificate for the name as per the scheme of amalgamation, the same was not

issued and, therefore, this petition.

7. In normal circumstances, once the contention having been negatived by this Court, it would not be open to the Registrar of Companies or the Regional Direction to resist for issuance of such certificate, which results into giving effect to the scheme of amalgamation, because such an action, if considered as it is, may result into prima facie defiance to the order of this Court. However, Mr.Malkan, learned Counsel appearing for the Opponent, submitted that the order passed by this Court dated 28.12.2004 of sanctioning of amalgamation was interpreted by the Registrar of Companies in the manner that the Company concerned will be required to follow the procedure under Section 21 of the Act because, in his submission, the power to accord the name of a company vests to the Central Government and not to this Court, while considering the question of sanctioning the scheme of amalgamation. He, therefore, submits that since no such procedure under Section 21 of the Act was followed, the communication was made by the Registrar of Companies to the applicant to comply with the requirement of Section 21 of the Act by passing the resolution of Special General Meeting, etc., and, therefore, the certificate was not issued.

8. Had this Court, while sanctioning the scheme, provided for separate procedure to be followed by the Company for giving effect to the scheme of amalgamation, the matter would have been different, but once this Court having sanctioned the scheme and the change of name is a part of that sanction, the contention as sought to be raised on behalf of the Opponent cannot be accepted. It is not open to either party to the proceedings to add any word or to abstract a different word, which is not conceived by the order of this Court and, therefore, the said contention of Mr.Malkan cannot be accepted.

9. The other contentions of Mr.Malkan that it is only the power of the Central Government to accord the name and such power of the Central Government cannot be said as included when this Court is exercising the power under Section 394 of the Companies Act for granting sanction to the scheme of amalgamation and that the order, if interpreted for no separate procedure under Section 21 to be followed, may give effect that this Court has exceeded in its jurisdiction under Section 394 of the Act and, therefore, it was reasonable for the Registrar of Companies to interpret the order accordingly cannot be entertained for the reasons stated hereinafter. As such once this Court having expressly negatived the

contention and did not provide for any additional procedure to be followed under Section 21 of the Act, it cannot be validly contended that this Court could not have sanctioned the scheme which, inter alia, provided for the change of name. In any way, the Central Government was heard and after hearing when the order is passed and the same is accepted or, in any case, not challenged before the higher forum, it hardly lies in the mouth of the opponent to contend that this Court had exceeded in its jurisdiction while exercising the power for sanctioning the scheme of amalgamation. Even otherwise also such grievance cannot be heard by the Coordinate Bench of this Court and when the Central Government or the Registrar of Companies or the Regional Director, as may be the case, has not challenged the decision of this Court for sanctioning the scheme of amalgamation.

10. Mr.Malkan, learned Counsel for Central Government, also contended that in the format of certificate of new name, the reference is required to be given of the resolution of the Company concerned and, therefore, he submitted that in absence of such resolution, it is difficult for opponent to issue such certificate.

11. It appears that when the scheme which was proposed is on the basis of the resolution of the company, the same

can be the basis, together with the sanction order passed by this Court and in the event such meeting is dispensed with by this Court while sanctioning the Scheme under Section 394 of the Act, mere reference to the order of this Court will be sufficient. In any event, such format cannot be validly pressed in service as against the implementation of the order of this Court of sanctioning the Scheme for amalgamation. It would be for opponent to correct the format accordingly and to issue the necessary certificate by implementing the order already passed by this Court.

12. In the result, the only answer would be that it is not open to the Registrar of Companies to raise objection for change of name, which is part of the scheme of amalgamation duly sanctioned by this Court on the ground that separate procedure under Section 21 of the Act is not followed or is required to be followed.

13. In view of the above, the opponent is directed to comply with the judgement and order dated 28.12.2004 passed by this Court (Coram: A.R.Dave, J.) and to consequently effect the change in name of the applicant Company from M/s.Shreno Investment and Finance Limited to M/s.Shreno Limited, without any further insistence of the procedure under Section 21 of the Indian Companies Act, by isuing necessary certificate within

10 days from the receipt of the present order of this Court.

14.The application is allowed to the aforesaid extent. No order as to cost.

6.9.2005 **(Jayant Patel, J.)**

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